

1 THE HONORABLE BARBARA J. ROTHSTEIN  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 JULIA CUMMINGS, an individual,

10 Plaintiff,

11 v.

12 SAFECO INSURANCE COMPANY OF  
13 AMERICA, a New Hampshire corporation;  
14 and JOSEPH JOHNS, an individual and in his  
capacity as a claims examiner,

15 Defendants.

16 No. 2:19-cv-01978-BJR

17 STIPULATED PROTECTIVE ORDER

18 1. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary, or  
20 private information for which special protection may be warranted. Accordingly, the parties  
21 hereby stipulate to and petition the court to enter the following Stipulated Protective Order.  
22 The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer  
23 blanket protection on all disclosures or responses to discovery, the protection it affords from  
24 public disclosure and use extends only to the limited information or items that are entitled to  
25 confidential treatment under the applicable legal principles, and it does not presumptively  
entitle parties to file confidential information under seal.

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2. “CONFIDENTIAL” MATERIAL

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“Confidential” material shall include the following documents and tangible things  
4 produced or otherwise exchanged:

5       • Defendant’s internal policies and practices;  
6       • Information relating to Defendant’s underwriting procedures, including pricing  
7 and rating;  
8       • Internal claim analysis;  
9       • Claims handling guidelines and training materials;  
10       • Reserving guidelines;  
11       • Reserve and/or reinsurance information;  
12       • Other insureds claims files or underwriting files;  
13       • Personal information; and  
14       • Any and all outside business consulting reports or communications not related to  
15 the particular claim at issue in this action.

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3. SCOPE

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18       The protections conferred by this agreement cover not only confidential material (as  
19 defined above), but also (1) any information copied or extracted from confidential material; (2)  
20 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
21 conversations, or presentations by parties or their counsel that might reveal confidential  
22 material.

23  
24       However, the protections conferred by this agreement do not cover information that is in  
25 the public domain or becomes part of the public domain through trial or otherwise.

1       4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2       4.1 **Basic Principles.** A receiving party may use confidential material that is  
3 disclosed or produced by another party or by a non-party in connection with this case only for  
4 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
5 disclosed only to the categories of persons and under the conditions described in this agreement.  
6 Confidential material must be stored and maintained by a receiving party at a location and in a  
7 secure manner that ensures that access is limited to the persons authorized under this agreement.

8       4.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise  
9 ordered by the court or permitted in writing by the designating party, a receiving party may  
10 disclose any confidential material only to:

11           (a) the receiving party's counsel of record in this action, as well as  
12 employees of counsel to whom it is reasonably necessary to disclose the information for this  
13 litigation;

14           (b) the officers, directors, and employees (including in house counsel) of the  
15 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
16 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
17 designated;

18           (c) experts and consultants to whom disclosure is reasonably necessary for  
19 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A);

21           (d) the court, court personnel, and court reporters and their staff;

22           (e) copy or imaging services retained by counsel to assist in the duplication  
23 of confidential material, provided that counsel for the party retaining the copy or imaging  
24 service instructs the service not to disclose any confidential material to third parties and to  
25 immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

## 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take

1 care to limit any such designation to specific material that qualifies under the appropriate  
2 standards. The designating party must designate for protection only those parts of material,  
3 documents, items, or oral or written communications that qualify, so that other portions of the  
4 material, documents, items, or communications for which protection is not warranted are not  
5 swept unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
7 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
8 unnecessarily encumber or delay the case development process or to impose unnecessary  
9 expenses and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it designated  
11 for protection do not qualify for protection, the designating party must promptly notify all other  
12 parties that it is withdrawing the mistaken designation.

13       5.2 Manner and Timing of Designations. Except as otherwise provided in this  
14 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
15 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
16 be clearly so designated before or when the material is disclosed or produced.

17           (a) Information in documentary form: (e.g., paper or electronic documents  
18 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
19 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
20 contains confidential material. If only a portion or portions of the material on a page qualifies  
21 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
22 making appropriate markings in the margins).

23           (b) Testimony given in deposition or in other pretrial proceedings: the parties  
24 and any participating non-parties must identify on the record, during the deposition or other  
25 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other

1 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
2 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
3 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
4 confidential information at trial, the issue should be addressed during the pre-trial conference.

5 (c) Other tangible items: the producing party must affix in a prominent place  
6 on the exterior of the container or containers in which the information or item is stored the word  
7 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
8 the producing party, to the extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
10 designate qualified information or items does not, standing alone, waive the designating party's  
11 right to secure protection under this agreement for such material. Upon timely correction of a  
12 designation, the receiving party must make reasonable efforts to ensure that the material is  
13 treated in accordance with the provisions of this agreement.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
20 original designation is disclosed.

21 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
22 regarding confidential designations without court involvement. Any motion regarding  
23 confidential designations or for a protective order must include a certification, in the motion or  
24 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
25 conference with other affected parties in an effort to resolve the dispute without court action.

1 The certification must list the date, manner, and participants to the conference. A good faith  
2 effort to confer requires a face-to-face meeting or a telephone conference.

3       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
4 intervention, the designating party may file and serve a motion to retain confidentiality under  
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
7 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
8 other parties) may expose the challenging party to sanctions. All parties shall continue to  
9 maintain the material in question as confidential until the court rules on the challenge.

10     7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
11     LITIGATION

12       If a party is served with a subpoena or a court order issued in other litigation that  
13 compels disclosure of any information or items designated in this action as  
14 “CONFIDENTIAL,” that party must:

15           (a)     promptly notify the designating party in writing and include a copy of the  
16 subpoena or court order;

17           (b)     promptly notify in writing the party who caused the subpoena or order to  
18 issue in the other litigation that some or all of the material covered by the subpoena or order is  
19 subject to this agreement. Such notification shall include a copy of this agreement; and

20           (c)     cooperate with respect to all reasonable procedures sought to be pursued  
21 by the designating party whose confidential material may be affected.

22     8.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23       If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
24 confidential material to any person or in any circumstance not authorized under this agreement,  
25 the receiving party must immediately (a) notify in writing the designating party of the

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
2 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
3 made of all the terms of this agreement, and (d) request that such person or persons execute the  
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
6 **MATERIAL**

7 When a producing party gives notice to receiving parties that certain inadvertently  
8 produced material is subject to a claim of privilege or other protection, the obligations of the  
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
10 provision is not intended to modify whatever procedure may be established in an e-discovery  
11 order or agreement that provides for production without prior privilege review. The parties  
12 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

13 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all appeals, each receiving  
15 party must return all confidential material to the producing party, including all copies, extracts  
16 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
17 destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
21 work product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a  
23 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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3 DATED: 10/01/2020

*s/ Jeff Bone*  
4 Attorneys for Plaintiff

5 DATED: 10/01/2020

*s/ Matthew S. Adams (per email authorization)*  
6 Attorneys for Defendant

7 DATED this 1st day of October, 2020.

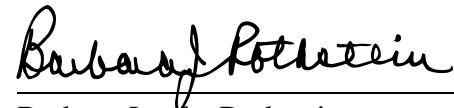
8 *s/ Jeff Bone*  
9 Jeff Bone, WSBA No. 43965  
10 Jocelyn Whiteley, WSBA No. 49780  
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15 Fax: (206) 625-0900  
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17 jwhiteley@corrchronin.com

18 *Attorneys for Plaintiff*

19 PURSUANT TO STIPULATION, IT IS SO ORDERED

20 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
21 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
22 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
23 documents, including the attorney-client privilege, attorney work-product protection, or any other  
24 privilege or protection recognized by law.

25 Dated this 22nd day of October 2020.

  
26 *Barbara Jacobs Rothstein*  
27  
28 Barbara Jacobs Rothstein  
29 U.S. District Court Judge

1 EXHIBIT A  
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ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty  
6 of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
7 was issued by the United States District Court for the Western District of Washington on  
8 \_\_\_\_\_ [date] in the case of *Cummings v. Safeco Insurance Company*  
9 *of America, et al.*, No. 2:19-cv-01978-BJR. I agree to comply with and to be bound by all the  
10 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
11 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
12 promise that I will not disclose in any manner any information or item that is subject to this  
13 Stipulated Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the  
16 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
17 Protective Order, even if such enforcement proceedings occur after termination of this action.

18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

21 Signature: \_\_\_\_\_

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